

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

CITY OF SEATTLE, SEATTLE POLICE
DEPARTMENT,

Petitioner,

vs.

SEATTLE POLICE OFFICERS' GUILD,

Respondent.

No.

**PETITION FOR WRIT OF
CERTIORARI**

I. GROUNDS FOR PETITION

On May 24, 2011, Labor Arbitrator Paul M. Grace issued an erroneous arbitration decision—in contravention of a clear mandate of Washington public policy—that requires the City of Seattle to withhold from the public the names of Seattle police officers who have been disciplined for misconduct. The Arbitrator's decision misinterprets the relevant collective bargaining agreement in a manner that requires the City to violate the explicit, well-defined, and dominant policy regarding open access to records under the Washington Public Records Act (or PRA), RCW Ch. 42.56. The City asks this Court to review and reverse the Arbitrator's decision through a Constitutional Writ of Certiorari.

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A. Factual Background

The Arbitration Decision at issue pertains to a grievance filed by the Seattle Police Officers' Guild (or SPOG) against the Seattle Police Department. *See* Arbitration Decision, p. 2.² The grievance arises from a dispute between SPOG and the City regarding the Police Department's duty to disclose disciplinary and investigatory documents upon receipt of a Public Records Act request from a citizen, media organization, or other requesting party. *See id.* Beginning in May 2009, in response to a request from a Seattle attorney, the Department began providing greater and better information in response to requests related to sustained disciplinary cases. *See id.* *See also* Hearing Exhibit 6.³ Sustained cases are ones in which the officer has been found to have committed some type of misconduct. The City believes that it is obligated to

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| PETITION FOR WRIT OF CERTIORARI - 2 | Peter S. Holmes Seattle City Attorney 600 Fourth Avenue, 4th Floor PO Box 94769 Seattle, WA 98124-4769 (206) 684-8200 |
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1 provide such disclosures under the Public Records Act. Because the City's view can readily be
2 harmonized with the language of the collective bargaining agreement, the City asked the
3 arbitrator to construe the agreement in accordance with the PRA.

4 SPOG, on the other hand, asked the Arbitrator to rule that the collective bargaining
5 agreement mandates the redaction of officer names "unless and until ... [the City] gets an order
6 from a court saying to stop and that it's unlawful." SPOG Opening Statement, Tr. I, p. 11.⁴ The
7 Guild acknowledges that there is at least an arguable basis for concluding that such redactions
8 could violate the Public Records Act. *See* Guild Post-Hearing Brief, p. 22.⁵ The Guild contends,
9 however, that its labor agreement requires the City to assert the PRA's law-enforcement
10 exemption, even when the Department officials believe that there is no factual or legal basis for
11 such an assertion. Any future penalties or attorney-fee awards for violation of the PRA would, in
12 the Guild's view, constitute an acceptable cost of complying with the Guild's interpretation of
13 the agreement. The Guild has never addressed the public's interest in prompt, full disclosure of
14 records under the Act.

15 Arbitrator Grace affirmed SPOG's contract grievance, holding that the contract required
16 the City to continue its "long-standing practice of redacting personal identifying information" from
17 disciplinary and investigatory records. *See* Arbitration Decision, p. 8. The Arbitrator rejected the
18 City's reliance on the Public Records Act, stating "there was no evidence that the disclosure
19 provision ... violated State law, [and] no 'tribunal of competent jurisdiction' had found the
20 provision invalid," *See id.*, p. 9. As a remedy, the Arbitrator ordered that "the City shall
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22 ⁴ The City submits both volumes I and II of the hearing transcript as Jones Dec., Ex. B.

23 ⁵ The Guild notes that "differing legal minds differ" regarding the unlawfulness of redacting names under RCW 42.56. Guild Post-Hearing Brief, p. 22. The Guild's post-hearing arbitration brief is filed contemporaneously with this Petition as Jones Dec., Ex. D.

1 comply with the Agreement and redact officers' names and serial numbers from all public records
2 disclosure requests for sustained findings per Article 3.6(K) of the Agreement." *Id.*, p. 11.

3 **B. Discussion**

4 The Court should issue a writ of certiorari and reverse Arbitrator Grace's decision
5 because it contravenes the public policy established by RCW 42.56. The PRA represents "a
6 'strongly worded mandate for broad disclosure of public records.'" *Yakima v. Yakima Herald-*
7 *Republic*, 170 Wn.2d 755, 791, 246 P.3d 768 (2011) (quoting *Soter v. Cowles Publishing Co.*,
8 162 Wn.2d 716, 731, 174 P.3d 60 (2007)). The Act requires the City to "make available for
9 public inspection and copying **all** public records." RCW 42.56.070(1) (emphasis added).
10 Exceptions to this mandate are limited and must be narrowly construed. *See id.*; *Yakima Herald-*
11 *Republic*, 170 Wn.2d at 791. Failure to provide complete documents under the PRA subjects the
12 City to financial penalties that are sufficiently severe to "discourage improper denial of access
13 to public records and [encourage] adherence to the goals and procedures dictated by the statute."
14 *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 459, 229 P.3d 735 (2010), quoting *Yousoufian*
15 *v. Office of King County Executive*, 152 Wn.2d 421, 98 P.3d 463 (2004). The PRA supersedes
16 the Public Employment Collective Bargaining Act. *See* RCW 42.56.030.⁶

17 The arbitration decision in this case violates the clear mandate of statutory public policy
18 because it requires the Seattle Police Department to withhold information that the PRA requires
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20 ⁶ Ch. 42.56.030 states--

21 The people of this state do not yield their sovereignty to the agencies that serve them. The people,
22 in delegating authority, do not give their public servants the right to decide what is good for the
23 people to know and what is not good for them to know. The people insist on remaining informed
 so that they may maintain control over the instruments that they have created. This chapter shall
 be liberally construed and its exemptions narrowly construed to promote this public policy and to
 assure that the public interest will be fully protected. ***In the event of conflict between the***
 provisions of this chapter and any other act, the provisions of this chapter shall govern.

1 it to disclose. Contrary to the argument of the Police Guild, the PRA's law-enforcement
2 exemption provides no colorable reason for withholding the information under the facts and
3 circumstances presented to the arbitrator. During the arbitration hearing, and in the post-hearing
4 briefs, the City presented a compelling interpretation of the collective bargaining agreement that
5 would avoid a conflict with the PRA. The arbitrator rejected the City's interpretation in favor of
6 an absurd result: requiring the City to assert a public records exemption that the City knows is
7 unsupportable by law. Forcing the City to knowingly violate the PRA is contrary to public policy
8 and must be rejected by the Court.

9 **III. APPLICATION FOR WRIT OF CERTIORARI AND** 10 **PRAYER FOR RELIEF**

11 Wherefore, Petitioner asks that the Court issue a Writ of Certiorari, review the labor
12 arbitration decision, and to enter an order vacating that decision as contrary to law and the public
13 policy of Washington.

14 In furtherance of the Court's review, the City submits the complete record of the
15 arbitration proceeding as Exhibits to the Declaration of Teresa Jones, as follows:

- 16 • Exhibit A: Arbitration Decision of Paul M. Grace;
- 17 • Exhibit B: Complete transcript of arbitration hearing in two volumes;
- 18 • Exhibit C: All exhibits admitted into evidence in the arbitration hearing;
- 19 • Exhibit D: SPOG Post-Hearing Brief; and
- 20 • Exhibit E: City Post-Hearing Brief.

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1 **IV. ORDER**

2 The Petitioner submits a proposed Order with its application for Writ of Certiorari.

3 DATED this 21st day of June, 2011.

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